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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,688	03/21/2006	Carlos Galceran Martorell	3608	4928

7590  
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Huntington, NY 11743

EXAMINER
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MEHTA, HONG T

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/572,688

### Applicant(s)

MARTORELL, CARLOS  
GALCERAN

### Examiner

HONG MEHTA

### Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on October 14, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on October 14<sup>th</sup>, 2009 has been entered.

Amended claims 5-14 are pending. Claims 1-4 are cancelled.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the

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contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claim 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (EP 0,217,368) further in view of Merritt et al. (US 4,767,635).**

5. **Regarding claim 5, 6, and 7,** Evans discloses a method of flavoring corn kernels (Abstract) comprising the steps of soaking the kernels in an aqueous solution containing water and sodium chloride at a temperature of about 100°F to 170°F for 60 minutes to 24 hours (pg. 4, lines 6-9; 14-16; Example 1). Evans discloses drying the corn kernels in a forced draft oven, hot air for 60 minutes (pg. 5, lines 29-33; Example 1). In addition, Evans discloses the additional food flavoring in the "swelling" step, within soaking water comprising garlic salt, onion salt, celery salt or butter flavored salt (pg. 4, lines 25-31). It would have been obvious to one of ordinary skill in the art to vary the combinations of additional flavoring salts to achieve a desired flavored corn kernel final product.

6. Evans does not disclose a surface coating with fixing agents or incorporating additional food flavoring within the step of drying the corn kernels.

7. However, Merritt et al. discloses a method of preparing a free-flowing uniformed flavorant coated unpopped corn (Abstract). Merritt et al. discloses a spray coating of "fixing agents", edible adhesive and other flavors used to coat the unpopped corn (col. 4, lines 43-48; col. 11, lines 31-35; col. 2, lines 22-28). Examiner considers unpopped corn to be raw corn kernels.

8. It would have been obvious to one of ordinary skill in the art to use Merritt's process of surface coating with edible adhesive and flavors in Evan's process of flavoring corn kernels. Merritt

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et al. disclose a step of coating the edible adhesive in order to prevent flavor loss in the flavored corn kernels final product. It would have been obvious to use Merritt's aqueous coating mixture with edible adhesive and flavoring contributing in Evan's flavoring process to ensure an overall quality of flavor of the flavored corn foodstuff upon consumption.

9. **With respect to claim 6**, it would have been obvious that the flavoring would still take place at room temperature but may have diminished effects since the art clearly recognizes that elevating the temperatures would increase it but it does not appear to be necessary in order for the flavoring to take place. Furthermore, 100 degrees is relatively close to room temperature which is dependent upon location and time of day.

10. **Regarding claim 8**, it is conventional to create a homogenous mixture of brine solution comprising water and sodium chloride before the addition of foodstuff, such as corn kernels. It is well known in the art to evenly dissolve and distribute the ingredients into aqueous solution for even treatment of brining of the foodstuff.

11. **Regarding claims 9, 10 and 11**, Merritt et al. in view of Evan disclose the presently claimed invention as mentioned above in claim 5. Examiner considers a degree within range of 100°F to 170°F (pg. 4, lines 6-9; 14-16; Example 1) in brining/soaking of corn kernels substantially higher than room temperature. The surface area of corn kernels are exposed to atmospheric pressure at any process steps of the flavoring corn kernels. The limitations of claim 9 and 11 of "under pressure" does not specify any pressure therefore atmospheric pressure is considered to be "under pressure".

12. **Regarding claim 12 and 14**, Merritt et al. discloses surface coating with edible adhesive comprising shellac which is a resin (col. 11, line 31), gelatin or pectin (col. 3, line 10) or the combination thereof, which does not impart food flavor such as in sweetness or saltiness.

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13. **Regarding claim 13**, Merritt et al. discloses a surface coating with edible adhesive comprising mannitol or zein or the combination thereof, which does impact food flavor sweetness (col. 3, line 13).

***Response to Arguments***

14. Applicant's arguments filed October 14, 2009 have been fully considered but they are not persuasive. Claims 5-13 were amended and new claim 14 added.

15. Applicant's argues with regard to amended claim 5, that Evans does not teach the coating surface of the corn kernels with flavors in the steps of swelling or drying of corn kernels. In addition, Merritt et al. does not teach the swelling step in water/sodium chloride brine solution and the steps of surface coating with flavors onto corn kernels which had been preliminarily swollen and dried. Examiner disagrees. The combined teachings of Merritt et al. and Evans disclose the claimed invention as discussed above with the coating of Merritt formed subsequent to the flavoring treatment of Evans. Evans provides a flavorant to the kernel which is imparted by a soaking process, while Merritt provides an adhesive coating to preserve the flavorant of the kernel. It would have been obvious to apply the coating of Merritt to the treated kernel of Evans to preserve the flavoring thereof. While Merritt teaches that a flavorant may be added to the kernel coating, it would have been obvious to use only the resin material if no further flavoring was desired in the kernel, since the resin material serves to protect the flavoring already present in the kernel.

16. In response to applicant's remarks that Evans does not teach the surface coating of the corn kernel with fixing agent. Examiner agrees, however the rejection is based on the combination of Merritt's and Evan's teachings to the claimed invention. Furthermore, Merritt et al. discloses surface coating with edible adhesive comprising shellac which is a resin (col. 11, line 31), gelatin or pectin

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(col. 3, line 10) or the combination thereof, which does not impart food flavor such as in sweetness or saltiness.

17. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

18. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Merritt et al. and Evans are both in the art of flavoring system of corn kernels for popcorn foodstuff.

### ***Conclusion***

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/JENNIFER MCNEIL/

Supervisory Patent Examiner, Art Unit 1794